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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of

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Amendment of the Commission's
 Rules to Establish New
 Personal Communications
 Services

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GEN Docket No. 90-314
 RM-7140, RM-7175,
 RM-7168

To: The Commission

**OPPOSITION TO REQUEST FOR
 LEAVE TO RESPOND AND MOTION TO STRIKE
RESPONSE OF PEGASUS COMMUNICATIONS, INC.**

Puerto Rico Telephone Company ("PRTC"), by its attorneys, and pursuant to Section 1.45(a) of the Commission's Rules, 47 C.F.R. § 1.45(a), respectfully submits this Opposition to the Request For Leave To Respond To Reply Of Puerto Rico Telephone Company ("Request For Leave") and this Opposition and Motion to Strike the Response To Reply Of Puerto Rico Telephone Company ("Response") filed by Pegasus Communications, Inc. ("Pegasus") on September 30, 1994, in the above-captioned proceeding. PRTC respectfully requests that the Commission deny the Request For Leave, and strike the Response from the record of this proceeding without consideration. In support of this Opposition and Motion to Strike, PRTC submits the following:

1. On July 25, 1994, PRTC filed a petition for reconsideration ("Petition") of the Commission's Memorandum Opinion and Order¹ in the above-captioned proceeding. As

¹ Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order, FCC 94-144, 75 RR 2d 491 (released June 13, 1994)("MO&O").

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permitted by Section 1.429(f)-(g) of the Commission's Rules, Pegasus filed an opposition on August 30, 1994 ("Opposition"), and PRTC filed a reply to the Opposition on September 14, 1994 ("Reply"). See 47 C.F.R. § 1.429(f)-(g).

2. Pegasus now requests leave to respond to the Reply, alleging that PRTC made new factual assertions to which it should be allowed to respond, and that it unilaterally reserved such a right for rebuttal in the Opposition. See Request For Leave at 1; Response at 1.

Regardless of whether a party may unilaterally reserve the right to respond to the final pleading in a pleading cycle, PRTC requests that the Commission note that the Reply makes only legal arguments, and does not attempt to introduce any new factual assertions. Therefore, since the reasons cited by Pegasus as good cause in support of its Request For Leave are incorrect, the Request For Leave should be denied. Absent grant of the Request For Leave, the Response is clearly an unauthorized pleading, submitted after completion of the Section 1.429 pleading cycle, and should be stricken from the record of this proceeding without consideration.

3. In the event the Commission decides to consider the Response -- and PRTC asserts that the Response should not be considered by the Commission -- PRTC submits the following opposition to certain mischaracterizations contained therein.

4. First, Pegasus argues that it "did not contend that PRTC had to show why it did not participate earlier in the proceedings." See Response at 2. However, the reason Pegasus (in its Opposition) "merely identified several of the opportunities" PRTC had to participate earlier in the proceeding, id., was to support Pegasus' insinuation that the Petition was "impermissibly out of time" (i.e., that the Petition was an untimely opposition to the Pegasus

petition for reconsideration filed December 8, 1993). See Opposition at 2-3. PRTC simply addressed these insinuations when demonstrating that the Petition was an authorized pleading pursuant to Section 1.429(i). See Reply at 3.

Furthermore, PRTC requests the Commission note that, contrary to Pegasus' assertion that PRTC relied upon the Section 1.106 party participation requirements, see Response at 3, Pegasus was the party that raised the issue of prior participation in the proceeding, as discussed in the preceding paragraph.

5. Pegasus next states that "PRTC does not refute ... that it did not meet the required Section 1.429(b) showing." Id. Despite this inaccurate statement, PRTC made clear in the Reply that it met the requirements of Section 1.429(b)(3), and therefore consideration of the pleading was authorized under the Rules. See Reply at 5.

6. Although in its Opposition Pegasus attacked the facts set forth by PRTC in the Petition as unsupported, see generally Opposition at 4-5, and as containing "no supporting documentation, declarations or affidavits of one with personal knowledge," id. at 5, Pegasus now concedes that such supporting information is not required. See Response at 3 and n.5. As a result, PRTC and Pegasus appear to agree regarding the level of support required for a petition for reconsideration in a rulemaking proceeding.

7. Pegasus next assails the public interest showing made by PRTC under Section 1.429(b)(3) of the Rules. See Response at 4-7. However, Pegasus fails to address the main thrust of PRTC's public interest argument: that it is unreasonable, arbitrary and fundamentally unfair for the Commission to change the service area definition for Puerto Rico from the single insular BTA-like service area, as originally adopted on a neutral and impartial record, to two

BTA-like areas as suggested by a single interested party. See Reply at 6.

8. Where Pegasus does address the public interest arguments raised by PRTC, its arguments are unpersuasive. First, Pegasus suggests that the authority cited by PRTC, Additional Private Radio Service, 1 FCC Rcd 5, 61 RR 2d 276 (1986), warrants denial of the Petition, see Response at 4, without explaining why the proposition cited is inapplicable. The precedent clearly supports the proposition that reconsideration is allowed on new facts "when the Commission determines that subsequent consideration is required to protect the public interest," as well as when the new facts "relate to events subsequent to the last opportunity for submission," or when the new facts "were then unknown and could not have been known by the petitioner at the time of the last opportunity." Id. Although the petitioner in that instance did not satisfy any of the three tests, and therefore reconsideration was denied, the test cited is valid precedent which supports PRTC's argument -- that reconsideration of the broadband PCS service area rules is authorized under Section 1.429(b)(3), since reconsideration is required to protect the public interest, as demonstrated by PRTC.

9. Second, Pegasus argues that the modified service area definition would be incongruent with the gerrymandering of the BTA service area definitions to suit the needs of Pegasus, as suggested by PRTC, since the San Juan BTA is larger in geographic size and population than the Mayaguez/Aguadilla-Ponce BTA, see Response at 4, and since the Mayaguez/Aguadilla-Ponce BTA is "not unattractive" on its own. Id. at 5. Again, Pegasus misses the point raised by PRTC; the issue raised by PRTC is not whether arguments can be made which may justify new service area definitions for Puerto Rico (or any other BTA or MTA, for that matter), but rather that the Commission should restore the only definition adopted

on a neutral and impartial basis. Moreover, the fact that the Mayaguez/Aguadilla-Ponce BTA (proposed by Pegasus) would be viable on its own is consistent with PRTC's argument (i.e., a party seeking a service area definition that served its own needs logically would propose an area that may be economically viable).

10. Third, PRTC disagrees with Pegasus' assertion that the infrastructure in Puerto Rico has "significant impediments," or that it is "extremely time-consuming to reach San Juan from the south and west." See Response at 6. This assertion can only be based on an outdated view of the infrastructure in Puerto Rico. Any portion of the island can be reached from San Juan within two hours over primary highways; for example, the 98 mile drive from San Juan to Mayaguez takes approximately two hours. Pegasus also points to highway construction between Aguadilla and San Juan, id., a distance of approximately 81 miles, apparently in reference to the construction of a new superhighway, Highway 22. However, all but about six miles of Highway 22 is now complete, and the remainder will likely be completed prior to the licensing and operation of PCS. Moreover, an existing primary highway, Highway 2, already links these two cities.

11. Finally, Pegasus suggests that the revised PCS construction requirements enhance the public interest benefits derived from two BTAs. Id. at 7. Pegasus states that the "Mayaguez/Aguadilla-Ponce BTA ensures that PCS will be available to at least two thirds of the BTA's approximately one million inhabitants,"² asserts that PCS licensees could meet their

² PRTC notes that the requirement to serve two-thirds of the population in the BTA is the 10 year construction requirement applicable to 30 MHz licensees, which on a BTA basis would only include the 30 MHz C block license. The 5 year construction requirement on the 30 MHz C block is one-third population coverage, and the 5 year construction requirement applicable to the remaining three 10 MHz BTA licenses (the D, E and F blocks) is one-fourth population

construction requirements "solely by serving San Juan and its environs," and concludes that without such a BTA, PCS licensees may not serve the residents of the Mayaguez/Aguadilla-Ponce BTA. Id.

As an initial matter, the assertion that a PCS licensee could meet its construction requirements "solely by serving San Juan and its environs" is factually incorrect. The 1990 population of the San Juan municipio was 437,745, less than 18% of the 1990 population of 2,473,564 for the 47 municipios in the San Juan BTA. Even considering the adjacent municipios which surround the San Juan municipio, the percentage of the population only increases somewhere from 40% to 45%.³ In addition, to the extent that Pegasus' rationale is relevant, the population coverage achievable for the San Juan BTA is roughly comparable to the coverage achievable for the Mayaguez/Aguadilla-Ponce BTA: a PCS licensee could provide coverage to 33% to 41% of the population by serving only three to five of the thirty-one municipios in that BTA.⁴ PRTC asserts that after paying the winning bid at auction for any BTA, the licensee will have adequate incentive to serve as much of the population as possible, thereby ensuring that the public interest will be served. Furthermore, the economies of scale that can be achieved by serving the entire island will make service to all portions of Puerto Rico more likely with a single BTA, as compared to a more fragmented two BTA definition.

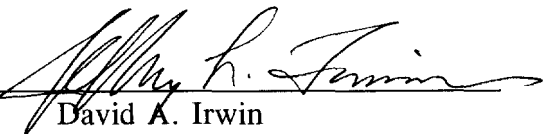
coverage. See 47 C.F.R. § 24.203.

³ The 1990 population for the San Juan, Bayamon, Carolina, Guaynabo and Trujillo Alto municipios was 989,819, or 40% of the population of the San Juan BTA. Including the Catano and Toa Baja municipios only increases the population to 1,113,860, and the percentage to 45%.

⁴ The 1990 population for the Mayaguez, Aguadilla and Ponce municipios was 347,455, or 33% of the population of 1,048,473 for the 31 municipios in the Mayaguez/Aguadilla-Ponce BTA. Including the municipios of Juana Diaz and Guayama would increase the population to 434,241, and the percentage to 41%.

WHEREFORE, for the reasons set forth herein, PRTC respectfully requests that the Commission deny the Request For Leave, and strike the Response from the record of this proceeding without consideration.

Respectfully submitted,
PUERTO RICO TELEPHONE COMPANY

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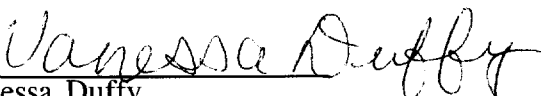
October 12, 1994

CERTIFICATE OF SERVICE

I, Vanessa Duffy, hereby certify that on this 12th day of October, 1994, copies of the foregoing "OPPOSITION TO REQUEST FOR LEAVE TO RESPOND AND MOTION TO STRIKE RESPONSE OF PEGASUS COMMUNICATIONS, INC." have been served by hand delivery or first class United States mail, postage prepaid, upon the following:

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